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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL SCOTT ARCELUS,

Defendant and Appellant.

F071390

(Super. Ct. No. CF06902400)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. W. Kent Hamlin, Judge.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Peter W. Thompson, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Franson, J. and McCabe, J.†

† Judge of the Merced Superior Court assigned by the Chief Justice pursuant to article IV, section 6 of the California Constitution.

Michael Arcelus appeals from the order of the trial court denying his motion to find his sanity had been restored after he pled not guilty by reason of insanity (NGI) to one count of assault with a machine gun in approximately 2007. Arcelus argues the trial court's order denying his motion is not supported by substantial evidence. We disagree and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Arcelus was charged with attempted second degree murder (Pen. Code, §§ 664 & 187, subd. (a))¹ and assault on a person with a machine gun (§ 245, subd. (a)(3)) as a result of an incident that apparently occurred in 2006. Arcelus was found not guilty by reason of insanity, apparently as the result of a plea agreement. On October 25, 2007, Arcelus was committed to the California Department of Mental Health and sent to Atascadero State Hospital pursuant to section 1026. Arcelus arrived at Napa State Hospital in 2010, and remained there until his release on a conditional release program in 2013. He was placed with Central Valley Conditional Release Program (CONREP) in 2014.²

In 2014, the People filed a petition to extend Arcelus's commitment in CONREP for another year pursuant to section 1600. Shortly thereafter, CONREP sought to revoke Arcelus's outpatient status pursuant to section 1608. Arcelus responded by making a motion to have his sanity adjudged restored pursuant to section 1026.2.

Two witnesses testified at the hearing on these motions. Victoria Kubal was a program clinician at CONREP. Her duties included case management, individual therapy, and group therapy. CONREP is a program designed for those found not guilty by reason of insanity or found to be mentally disordered offenders which allows the

¹ Unless otherwise noted, all statutory references are to the Penal Code.

² These facts were gleaned from our unpublished opinion in *People v. Arcelus* (Feb. 19, 2014, F066266 [nonpub. opn.]) and the People's petition to extend Arcelus's commitment, as well as the People's trial brief.

patient to reintegrate into the community while receiving the supervision and treatment necessary for the safety of the public.

Kubal first met Arcelus when she performed his intake at CONREP in 2014. Arcelus was also in one of the therapy groups she ran. Finally, she became his primary care clinician shortly before the various pleadings were filed in this case. Prior to her testimony, she had reviewed various reports prepared regarding Arcelus.

Kubal opined that Arcelus suffers from a mental disorder, antisocial personality disorder, which she described as a persistent disregard for the rights of others and working social norms. Kubal explained that Arcelus repeatedly violated the rules of the program. Writings by Arcelus also indicated aggression and thoughts of violence toward individuals in the program. He wrote about his disdain for the rules of the program and the program itself. He also wrote about his history of violence and breaking of rules when he was a child. Arcelus's crime which led to his NGI plea, firing an assault weapon at a farm worker, further evidenced his violent history.

The writings Kubal referred to were apparently part of Arcelus's work done for Narcotics Anonymous meetings. Kubal testified that within the CONREP program, such notes are not confidential.

Kubal opined that Arcelus posed a significant danger to others if not under 24-hour supervision because he had difficulty controlling his dangerous behavior. She reasoned that Arcelus needed continued treatment to learn to function in society, and at the end of his stay at CONREP he was resistant to treatment and refused to participate in the program.

Patricia Tyler, M.D., testified on behalf of Arcelus. Tyler is the medical director at Napa State Hospital. She opined that Arcelus did not meet the criteria for an antisocial personality disorder. She noted there was no evidence that Arcelus had been arrested prior to age 18, he did not report to her any criminal behavior prior to age 18, nor did his family report criminal behavior before he turned 18, which was inconsistent with the

disorder. In her personal interactions with Arcelus she did not observe a persistent pattern of disregard for others, deceitfulness, lack of remorse, or breaking laws. She also testified that once Arcelus stopped using drugs, he did not commit any violence toward others, which would be inconsistent with a diagnosis of antisocial personality disorder.

Tyler was familiar with the Narcotics Anonymous program, and testified one step to be completed in the program required the patient to write down all of the things the patient has done over the years to harm people. The purpose of this step was to force the patient to look at how their behavior affected other people. She believed that Kubal's reliance on the items written by Arcelus as part of the Narcotics Anonymous program was not only improper but a misapplication of the principles behind the writings. Tyler felt the fact Arcelus had written his behaviors down in an apparently honest fashion demonstrated that he was working to resolve the problems that led him to substance abuse, which was evidence that he was not a danger to others. She felt it was improper to use those writings for any purpose. Tyler admitted she had not seen Arcelus since the middle of 2013.

The trial court first recognized that the record was incorrect since once Arcelus was found not guilty by reason of insanity and was committed to the Department of State Hospitals, he may be released only if sanity is restored as provided in section 1026.2, or the expiration of the maximum period of confinement as defined in section 1026.5, subdivision (a), or as that period is extended pursuant to section 1026.5, subdivision (b). (§ 1026.1.) The record apparently indicated that Arcelus's maximum period of confinement was 10 years, which was incorrect. The record was corrected to indicate the correct maximum period of confinement of 22 years. Therefore, the issues before the trial court were (1) Arcelus's motion to have the trial court determine that his sanity was restored (§ 1026.2), (2) the People's motion to revoke Arcelus's outpatient status and return him to a state mental hospital (§ 1608), and (3) if both of the above were denied, the need to extend Arcelus's outpatient status for another year (§ 1606).

The trial court ruled that it was unclear whether Arcelus suffered from antisocial personality disorder, but Tyler essentially conceded he suffered from a personality disorder not otherwise specified. However, the trial court observed that the name put on the diagnosis was not significant, as the issue was whether Arcelus had a mental disease or defect that caused him to be a danger to the health and safety of others. It concluded that, on the issue of whether Arcelus had been restored to sanity, the defense had failed to establish that he would not be a danger to the health or safety of others. The trial court focused on Arcelus's behavior at the end of his stay at CONREP, including his difficulty controlling dangerous behavior, impulsivity, disregard for rules, difficulty controlling his emotions, and his increased instability when confronted with adverse situations. However, the trial court rejected the People's application to return Arcelus to a state mental hospital, and ordered his outpatient treatment extended for one year.

After the hearing, Arcelus's problems with CONREP continued, and he agreed to a transfer to a state mental hospital.

DISCUSSION

As the trial court noted throughout the proceedings, the law and the procedural posture of this case made its task more difficult. Section 1026.3 authorizes outpatient treatment for a person found not guilty by reason of insanity using the procedures found in section 1600, et. seq. In short, when the director of the state mental hospital feels a patient should be moved to outpatient treatment, a referral is made to the court. (§ 1602.) A hearing is then held after notice to all parties, and the court decides whether to order the patient moved to outpatient treatment. (*Ibid.*) Outpatient status lasts for one year, which may be extended based on the information before the court. (§ 1606.) The outpatient treatment supervisor, or the prosecutor, may request at any time that outpatient status be revoked. (§§ 1608, 1609.)

As noted above, an individual found not guilty by reason of insanity may be released in one of two ways: (1) a finding that his sanity has been restored, or

(2) expiration of the maximum period of confinement. The trial court denied Arcelus's motion for a finding that his sanity was restored. This appeal addresses only the issue of the denial of Arcelus's motion. He argues there is insufficient evidence to support the trial court's order.

When the sufficiency of the evidence to support an order is challenged on appeal, we review the entire record in the light most favorable to the order to determine whether it contains evidence that is reasonable, credible, and of solid value to support the order. (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) Our review must presume in support of the order the existence of every fact the trier of fact could reasonably have deduced from the evidence. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) The relevant inquiry on appeal is whether, in light of all the evidence, "any reasonable trier of fact could have [reached the same conclusion as the trial court.]" (*People v. Towler* (1982) 31 Cal.3d 105, 118.)

Section 1026.2, subdivision (e) defines the restoration of a patient's sanity as requiring the trial court to find "the [patient] is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder." The trial court found that due to a mental defect, disease, or disorder, Arcelus posed a danger to the health and safety of others. While the trial court was not convinced that Kubal's diagnosis of antisocial personality disorder was correct, it observed that even Tyler conceded that Arcelus likely had a mental disease, personality disorder not otherwise specified. He also pointed to Kubal's testimony that Arcelus had difficulty controlling his behavior, impulsivity, a disregard for rules, difficulty controlling his emotions, and increased instability when confronted with situations that did not proceed as he thought they should. Kubal testified to each of these personality traits, which provides sufficient evidence to support the trial court's ruling.

We also note the trial court significantly discounted Tyler's testimony. Tyler testified that Arcelus was a patient who had been diagnosed with a substance-induced

psychotic disorder that resolved, but he retained certain antisocial traits or an antisocial personality disorder. What recommendations Tyler's team provided to the court in such situations was a topic often discussed. Tyler testified that a specific United States Supreme Court case was very important, and that case guided her department's recommendations to the court. She identified the case as "Blakely versus Louisiana," and opined the case stood for the proposition, in essence, that if a patient is no longer mentally ill, they should not be in a mental health hospital and since Arcelus no longer suffered from substance-induced psychotic disorder, he should be released. She further testified that antisocial personality traits would not qualify one for a NGI plea, because individuals with such traits understand right from wrong, and if all that were required was an antisocial personality disorder to retain people in prisons, most prisoners would never be released.

The trial court noted in its ruling that Tyler had incorrectly cited the Supreme Court case, which was probably two cases, *Foucha v. Louisiana* (1992) 504 U.S. 71 and *People v. Superior Court (Blakely)* (1997) 60 Cal.App.4th 202, and had not understood the holding of either case. As such, her testimony was largely based on an incorrect understanding of the law.

Arcelus's brief asserts that he met his burden of proof in the trial court through Tyler's testimony, and argues that Kubal's testimony is not worthy of belief. It also minimizes the factual testimony provided by Kubal in an attempt to strengthen his argument. Our task, however, is not to reweigh the evidence, but to review all of the evidence and determine whether there is sufficient evidence that Arcelus posed a danger to the health and safety of others due to a mental disease or defect. (§ 1026.2, subd. (e); *People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225, 235-237 ["Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or

falsity of the facts upon which a determination depends.”].) Kubal’s testimony is reasonable, credible, and of solid value to support the order.

DISPOSITION

The order denying Arcelus’s motion to find that his sanity has been restored is affirmed.